

REMARKS

In the Office Action, the Examiner rejected claims 1-23, 31-35, and 40-49. By this paper, Applicant has amended claims 15 and 41 and has canceled claim 19. These amendments do not add any new matter, and support for the amendments may be found at least at page 9, lines 26-29; and page 13, lines 2-4 of the originally filed specification. Upon entry of these amendments, claims 1-18, 19-23, 31-35, and 40-49 will remain pending in the present application and are believed to be in condition for allowance. In view of the foregoing amendments and the following remarks, Applicant respectfully requests reconsideration and allowance of all pending claims.

Rejections Under 35 U.S.C. § 103

The Examiner rejected claims 1-23, 31-35, and 40-49 under § 103(a) as being obvious over various pieces of prior art. The prior art utilized in the rejection of independent claims 1, 15, 31, 40, 41, and 42 will be outlined below. The Examiner rejected independent claims 1 and 42 under 35 U.S.C. § 103(a) as being unpatentable over Huffman, U.S. Publication No. 2004/0005094 (hereinafter “Huffman”) in view of Machida, U.S. Patent No. 6,642,943, (hereinafter “Machida”) in further view of Wood et al., U.S. Patent No. 5,851,186 (hereinafter “Wood”) and in further view of Wiklof et al., U.S. Publication No. 2005/0023356 (hereinafter “Wiklof”).

The Examiner also rejected independent claim 15 under 35 U.S.C. § 103(a) as being unpatentable over Tokunaga et al., U.S. Patent No. 5,968,132 (hereinafter “Tokunaga”) in view of Wood and in further view of Benejam et al., U.S. Patent No. 7,133,915 (hereinafter “Benejam”). Office Action, page 3. The Examiner further rejected dependent claim 19 over Tokunaga in view of Wood and Benejam and in further view of Wiklof.

Additionally, the Examiner rejected independent claims 31 and 40 under 35 U.S.C. § 103(a) as being unpatentable over Tokunaga in view of Wood and in further view of Aweya et al., U.S. Patent No. 7,047,312 (hereinafter “Aweya”).

Finally, the Examiner rejected independent claim 41 under 35 U.S.C. § 103(a) as being unpatentable over Tokunaga in view of Wood.

Applicant respectfully traverses these rejections. The burden of establishing a *prima facie* case of obviousness falls on the Examiner. *Ex parte Wolters and Kuypers*, 214 U.S.P.Q. 735 (B.P.A.I. 1979). To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 180 U.S.P.Q. 580 (C.C.P.A. 1974). However, it is not enough to show that all the elements exist in the prior art since a claimed invention composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR International Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). It is important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. *Id.* Specifically, there must be some articulated reasoning with a rational underpinning to support a conclusion of obviousness; a conclusory statement will not suffice. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Indeed, the factual inquiry determining whether to combine references must be thorough and searching, and it must be based on *objective evidence of record*. *In re Lee*, 61 U.S.P.Q.2d 1430, 1436 (Fed. Cir. 2002). Therefore, the Examiner must establish, based on objective evidence of record, reasons supporting a conclusion as to the combinability of the references in making an obviousness rejection.

Omitted Features of Independent Claims 1 and 42

Independent claims 1 and 42 recite, *inter alia*, “a plurality of network sensors...configured to provide *network performance data* to the serving station, wherein

the serving station dynamically modifies at least one of *the scanning rate and the encoding format* based on the *network performance data*.” (Emphasis added). The Examiner conceded that Huffman fails to describe a plurality of sensors configured as recited above. *See* Office Action, page 18. To cure this deficiency, the Examiner relied on Machida to teach a plurality of network sensors configured to provide *network performance data* to the serving station, wherein the serving station dynamically modifies at least one of *the scanning rate and the encoding format* based on the *network performance data*. *Id.* (emphasis added.) Applicant respectfully disagrees with this application of Machida.

The Machida reference is directed to a digital copying machine capable of printing and scanning functions that may be controlled by one or more networked computers. *See* Machida, col. 4, lines 12-25 and 30-42. Indeed, the portions of Machida relied upon by the Examiner to teach providing network performance data to the serving station, wherein the serving station dynamically modifies at least one of the scanning rate and the encoding format based on the network performance data, actually describe adjusting the resolution of a copier from 600 dpi (dots per inch) to 300 dpi when there is traffic on the network. *See* Machida, col. 15, lines 36-54. That is, to speed up printing/scanning functions of a digital copier, the resolution may be automatically set to a predetermined level (in this case ½ of the normal level). However, this modification of the printing/scanning function is not, as recited in independent claims 1 and 42, based on the network performance data. Instead, the printing/scanning functions are altered only in response to detection of a rise in network traffic, and are not based on network performance. *See* Machida, col. 15, lines 49-54.

Furthermore, Applicant would like to note that while Machida teaches that reducing the resolution of scanned or printed images may modify the amount of data processed, Machida fails to teach modifying at least the scanning *rate* or the encoding *rate*, as recited in independent claims 1 and 42.

Wood and Wiklof fail to overcome the deficiencies of Huffman and Machida. Wood is directed to an imaging system capable of being accessed over a network. *See* Wood, Abstract. Wiklof is directed to a variable scanner that may emit a selected amount of power to a plurality of spots across a field of view. *See* Wiklof, Abstract. However, both Wood and Wiklof are silent as network sensors configured to provide *network performance data* to the serving station, wherein the serving station dynamically modifies at least one of *the scanning rate and the encoding format* based on the *network performance data*. Thus, the Huffman, Machida, Wood, and Wiklof references, even in hypothetical combination, fail to disclose all elements of independent claims 1 and 42. Accordingly, Applicant respectfully requests withdrawal of the Section 103 rejection of independent claims 1 and 42, and further requests their allowance as well as that of all claims depending therefrom.

Omitted Features of Independent Claim 15

Independent claim 15 has been rewritten to include recitations from dependent claim 19. Specifically, amended independent claim 15 recites, *inter alia*, “adjusting the screen data comprises modifying a *frame buffer scanning algorithm* based on the network performance.” (Emphasis added). The Examiner conceded that Tokunaga, Wood, and Benejam fail to teach modifying a *frame buffer scanning algorithm* based on the network performance. Office Action, page 41. To cure this deficiency, the Examiner relied on Wiklof in rejecting analogous recitations previously in dependent claim 19. *See id.* Applicant respectfully disagrees with this application of Wiklof.

Wiklof is directed to a variable scanner that may emit a selected amount of power to a plurality of spots across a field of view. *See* Wiklof, Abstract. This may be accomplished by employing various digital values in a frame buffer that correspond to desired illumination intensities. *See* Wiklof, paragraph 77. The digital values may be changed for a second, third, or any subsequent scan. *Id.* However, utilization of a frame

buffer to store digital values that correspond to illumination intensities does not correspond to modifying a frame buffer scanning *algorithm* based on the network performance, as recited in independent claim 15. The *algorithm* of Wiklof is unchanged, namely store digital values in a frame buffer. Moreover, there is no indication that the frame buffer algorithm is modified *based on* the network performance. Accordingly, Wiklof fails to overcome the deficiencies of Tokunaga, Wood, and Benejam.

Thus, the Tokunaga, Wood, Benejam, and Wiklof references, even in hypothetical combination, fail to disclose all elements of independent claim 15. Accordingly, Applicant respectfully requests withdrawal of the Section 103 rejection of independent claim 15 and its allowance, as well as that of all claims depending therefrom.

Omitted Features of Independent Claims 31 and 40

Independent claims 31 and 40 recite, *inter alia*, “comparing the network performance *to a specified range*.” (Emphasis added). The Examiner conceded that Tokunaga and Wood fail to teach comparing the network performance *to a specified range*. Office Action, page 10. To cure this deficiency, the Examiner relied on Aweya. *See id.* Applicant respectfully disagrees with this application of Aweya.

Aweya discloses a network device that incorporates a transmission control protocol rate control scheme for internet packet transmission. *See* Aweya, Abstract. Indeed, Aweya describes determining window size, the maximum amount of data that can be buffered at one time, and advertising the calculated window size as a technique for reducing network congestion. *See* Aweya, col. 2, lines 35-48, col. 3, lines 13-15. However, determining the window size of a TCP system, *i.e.* the maximum amount of data that can be buffered at one time, is not analogous to comparing the network performance *to a specified range*. Determining a window size, as described by Aweya, does not include any comparison of the network performance, let alone a comparison of

the network performance *to a specified range* as recited in independent claims 31 and 40. Accordingly, Aewya fails to overcome the deficiencies of Tokunaga and Wood.

Thus, the Tokunaga, Wood, and Aewya references, even in hypothetical combination, fail to disclose all elements of independent claims 31 and 40. Accordingly, Applicant respectfully requests withdrawal of the Section 103 rejection of independent claims 31 and 40 and their allowance, as well as that of all claims depending therefrom.

Omitted Features of Independent Claim 41

Independent claim 41 has been rewritten to include recitations similar to independent claim 15, specifically “adjusting the screen data comprises modifying a *frame buffer scanning algorithm* based on the network performance.” (Emphasis added). Applicant respectfully requests that independent claim 41 be allowed for analogous reasons as those set forth above with respect to independent claim 15.

Conclusion

In view of the remarks and amendments set forth above, Applicant respectfully requests allowance of the pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

Date: July 7, 2008

/Patrick S. Yoder/
Patrick S. Yoder
Reg. No. 37,479
FLETCHER YODER
P.O. Box 692289
Houston, TX 77269-2289
(281) 970-4545